

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JOSE ROLANDO SEGURA-
GARCIA,

Petitioner,

v.

J. TIM OCHOA,

Respondent.

Case No. EDCV 12-01475 GW (AN)

ORDER ACCEPTING THE FINDINGS
AND RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the file, including the Magistrate Judge's Report and Recommendation ("R&R") and Petitioner's Objections [21]. Further, the Court has completed a *de novo* review of those portions of the R&R to which Petitioner has objected.

IT IS ORDERED that:

1. The Objections are overruled because they fail to show the findings and recommendation of the R&R are factually or legally erroneous. Accordingly, the Court accepts the findings and recommendation in the R&R.

2. In the Objections, Petitioner also requests that his First Amended Petition ("FAP") be dismissed without prejudice if the Court decides to dismiss his FAP so he


1 can return to the state court to exhaust his constitutional claims. (Obj. at 4.) However,
2 as explained in the R&R, the problem with the sentencing error claim raised in the
3 Petition is not that it was never presented to the state supreme court. Rather, the
4 problem is that it is not cognizable for purposes of 28 U.S.C. § 2254 because it was
5 fairly presented to the state supreme court as a non-cognizable state claim, which the
6 state supreme court denied on the merits. Consequently, as explained in the R&R, the
7 problem is that the sentencing error claim is non-cognizable, not that it is unexhausted.
8 (See R&R at 2-3.) Accordingly, Petitioner's request to dismiss his FAP without
9 prejudice is denied.

10 3. Judgment shall be entered denying the FAP and dismissing this action with
11 prejudice.

12 4. Any and all other motions are denied as moot and terminated.

13 IT IS FURTHER ORDERED that the clerk of the Court shall serve a copy of this
14 Order and the Judgment on all counsel or parties of record.

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17 Dated: May 7, 2013



GEORGE H. WU
UNITED STATES DISTRICT JUDGE